

**PROVIDING FOR THE TRANSFER OF CASES BETWEEN
DISTRICT COURTS AND THE COURT OF CLAIMS**

JUNE 10, 1959.—Referred to the House Calendar and ordered to be printed

Mr. FORRESTER, from the Committee on the Judiciary, submitted
the following

REPORT

(To accompany H.R. 5396)

The Committee on the Judiciary, to whom was referred the bill (H.R. 5396) to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the bill is to authorize the transfer of cases between the district courts and the Court of Claims and vice versa in order to cure jurisdictional defects.

NEED OF LEGISLATION

Testimony before a subcommittee of the House Judiciary Committee by lawyers engaged in maritime practice, revealed substantial difficulty for even the most diligent and experienced lawyers in choosing the proper forum for certain maritime claims against the Government. This bill would prevent otherwise meritorious claims from being time barred as a result of such unavoidably inappropriate choices of forum.

COST

No additional cost to the Government is involved.

JUDICIAL AND DEPARTMENTAL RECOMMENDATION

A bill identical to H.R. 5396 was introduced in the 85th Congress and passed the House late in the 2d session. Reports were requested of interested departments and agencies in 1958. There is no reason to

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believe that there has been any change in the views which were transmitted to the committee at that time. The Judicial Conference of the United States recommended approval of this bill. In addition, the chief judge of the Court of Claims, on behalf of that court, strongly endorsed it. Reports were requested from both the Department of the Navy and the Department of Justice. Navy reported that the problems were primarily under the jurisdiction of Justice and Justice did not report. The recommendations which were received are appended hereto.

GENERAL STATEMENT

Contract suits against the United States involving certain maritime transactions may be brought either in the Court of Claims or in the U.S. district courts in admiralty depending upon the statutory authority involved. Thus, suits under the Suits in Admiralty Act (41 Stat. 526, 46 U.S.C. 741) and the Public Vessels Act (43 Stat. 112, 46 U.S.C. 781) lie exclusively in admiralty in the U.S. district courts, while under the Tucker Act (28 U.S.C. 1346) there is concurrent jurisdiction in the district courts and the Court of Claims for claims not exceeding \$10,000 and exclusive jurisdiction in the Court of Claims for claims in excess of \$10,000. In addition to jurisdictional differences under these statutes, there are also differences in the applicable statutes of limitations. Under the Tucker Act the statute of limitations is 6 years, while under the Suits in Admiralty Act and the Public Vessels Act it is 2 years.

Since the applicability of these acts to a given factual situation is frequently exceedingly difficult to determine and a question on which reasonable men may differ, lawyers in maritime practice occasionally and unavoidably bring suit in the wrong forum. This presents no problem in claims under \$10,000 brought in the district courts. If improperly brought in admiralty, the case may be transferred to the law side of the court (*The Everett Fowler*, 151 F. 2d 662 (2d Cir. 1945), certiorari denied, 327 U.S. 804 (1945)). It would seem that the converse would also be held proper where a case filed on the law side is held to be properly under the Suits in Admiralty Act.

The serious problem, and the one to which this bill is directed, arises in claims exceeding \$10,000 where there is uncertainty as to whether a suit is properly brought under the Tucker Act on the one hand or the Suits in Admiralty or Public Vessels Act on the other. Since, under existing law, cases are not transferrable between the district courts and the Court of Claims, an inappropriate choice of jurisdiction may result in the statute of limitations having run against a claim by the time the issue of appropriate jurisdiction is finally adjudicated.

A substantial portion of the jurisdictional uncertainty in this area is attributable to confusion in establishing whether a vessel is a "merchant vessel" or a "public vessel." If a "merchant vessel," under the Suits in Admiralty Act exclusive jurisdiction is in the district courts in admiralty. If a "public vessel," jurisdiction may be either in admiralty under the Public Vessels Act or under the Tucker Act, depending on the nature of the claim. It will be recalled that a claim under the Tucker Act exceeding \$10,000 must be brought in the Court of Claims.

Some indication of the difficulties confronting maritime lawyers in choosing a proper forum where the merchant-vessel-public vessel issue arises can be seen from the following cases:

(1) In *Calmar Steamship Corp. v. U.S.* (103 F. Supp. 243 (1951)) the district court held that a suit involving a privately owned vessel which was operated for the United States and carrying military supplies was properly in admiralty because the ship was a merchant vessel within the meaning of the Suits in Admiralty Act. The court of appeals reversed on the ground that the ship was not a merchant vessel, since it was carrying war materiel (197 F. 2d 795 (1952)). On appeal to the Supreme Court, it was held that the ship was a merchant vessel and the court of appeals was reversed (345 U.S. 446 (1953)).

(2) In *Aliotti v. U.S.* (221 F. 2d 598 (1955)) the Court of Appeals for the Ninth Circuit held that a suit by the owner of a vessel, bareboat-chartered to the United States, to recover the cost of restoration to its original condition, came exclusively under the Public Vessels Act, whether or not the vessel was a merchant vessel or a public vessel. In direct conflict was the decision of the first circuit in *Eastern Steamship Lines v. U.S.* (187 F. 2d 957 (1951)) which held that a similar suit involving a public vessel came exclusively within the Tucker Act and not the Public Vessels Act.

Conflicting decisions as to jurisdiction also have been rendered in general average claim suits against the United States. The Court of Claims, in *Lykes Bros. Steamship Co., Inc. v. U.S.* (124 F. Supp. 622 (1954)) held that such suits lay in admiralty. On the other hand, the District Court for the Southern District of New York held that jurisdiction lay at law under the Tucker Act (*States Marine Corp. of Delaware v. U.S.*, 120 F. Supp. 585 (1954)). However, the Court of Appeals for the Second Circuit reversed and held that admiralty was the proper forum.

Uncertainties of this kind have arisen in charter accounting suits for the recovery of alleged overpayments to the U.S. Maritime Commission. In *Smith-Johnson Steamship Corp. v. U.S.* (139 F. Supp. 298 (1956)) the Court of Claims held that it had jurisdiction. In a similar suit the Court of Appeals for the Second Circuit held that jurisdiction lay exclusively in admiralty (*Sword Line, Inc. v. U.S.* 228 F. 2d 344 (1955), 230 F. 2d 75 (1956)). Upon affirmance of the second circuit decision by the Supreme Court at 351 U.S. 976 (1956), the Court of Claims reversed its earlier holding and dismissed a large number of suits which had been filed in that court.

The possibility of counsel unavoidably choosing the inappropriate forum is thus apparent. In order to prevent dismissal of suits which would become time barred when the appropriate forum had finally been determined, this bill would permit the transfer of cases to the appropriate court. Since under transfer procedure the statute of limitations is tolled with the filing of the original suit, an action would not be dismissed because a subsequent decision that the plaintiff had chosen the wrong forum came at a time when the statute of limitations precluded filing a new action in the appropriate court. In dealing with the analogous problem of erroneously chosen venue, section 1406 (a) of title 28 authorizes a district court, where it is in the interest of justice, to transfer rather than dismiss a suit brought with improper venue.

The reform of existing practice embodied in this bill is another expression of the underlying philosophy of the Federal Rules of Civil Procedure and of modern legal practice generally, that the decisive question in a lawsuit should, as far as possible, be its merits and not esoteric, technical problems of procedure.

U.S. COURT OF CLAIMS,
Washington, D.C., April 30, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In answer to your inquiry of April 26, in reference to H.R. 3046 now pending before your committee, we are heartily in favor of the purposes of this legislation.

I may add that this type of legislation is especially needed in those cases in which the question of which court has jurisdiction is a close one. In such cases it is rather difficult for the attorney representing the plaintiff to determine in which court suit should be brought. It will be a matter of economy to litigants on both sides to have the case transferred and thus save the expense of dismissal and refile in the other court.

Then, too, it sometimes develops that when the matter of jurisdiction is finally determined in a pending case it is too late to file in the other court and thus a disposition on the merits is not had. This is perhaps one of the major reasons for the enactment of the proposed legislation.

The need of the legislation seems so clear that unless you wish us to do so we will not have a representative present. However, if you or the committee wish us to do so I shall be happy to come personally or to send one of our trial commissioners, W. Ney Evans, who is thoroughly familiar with the subject.

If you deem it desirable that a representative of our court should be present will you kindly have the office force notify us; otherwise we will treat this letter as stating the views of our court in the matter.

Thanking you for your thoughtfulness in affording us this opportunity, I am,

Sincerely yours,

MARVIN JONES, *Chief Judge.*

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D.C., March 7, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Judicial Conference of the United States, at its session in September 1957, considered the proposal contained in H.R. 3046, now pending before your committee, to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims.

This proposal was first brought to the attention of the Judicial Conference at its September 1954 session and at that time the Con-

ference approved H.R. 9346 of the 83d Congress, which is identical to H.R. 3046, 85th Congress. At its session in March 1955, the Conference also approved H.R. 668, of the 84th Congress containing the same proposal.

I am authorized to inform you that the Judicial Conference of the United States at its most recent session renewed its recommendation for this proposed legislation and approved the enactment of H.R. 3046.

Sincerely yours,

WARREN OLNEY III, *Director.*

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., May 1, 1958.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on H.R. 3046, a bill to amend title 28 of the United States Code to provide for transfer of cases between the district courts and the Court of Claims, has been referred to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The purpose of the bill is to amend title 28 of the United States Code to provide that if a case within the exclusive jurisdiction of the Court of Claims is filed in the district court, the district court shall transfer such case to the Court of Claims, unless the parties consent to a dismissal of the case. It further provides that the Court of Claims shall transfer any case filed in the Court of Claims but within the exclusive jurisdiction of the district courts to any district court in which it could have been brought at the time such case was filed, unless the parties thereto consent to a dismissal of the case.

H.R. 3046 deals with problems that are primarily under the jurisdiction of the Attorney General of the United States. Therefore, the Department of the Navy, on behalf of the Department of Defense, defers to the views of the Department of Justice with respect to enactment of H.R. 3046.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H.R. 3046 to the Congress.

Sincerely yours,

R. Y. McELROY,
Captain, U.S. Navy,
Deputy Director, Legislative Liaison
(For the Secretary of the Navy).

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out inclosed in black brackets and new matter proposed to be added shown in italics:

TITLE 28, UNITED STATES CODE

1406. CURE OR WAIVER OF DEFECTS.

(a) * * *

(b) * * *

(c) *If a case within the exclusive jurisdiction of the Court of Claims, filed in a district court, the district court shall, unless the parties consent to dismissal, transfer such case to the Court of Claims.*

TITLE 28, UNITED STATES CODE

CHAPTER 91.—COURT OF CLAIMS

1491. * * *

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1505. * * *

1506. *Transfer to cure defect of jurisdiction.*

§ 1506. TRANSFER TO CURE DEFECT OF JURISDICTION.

If a case within the exclusive jurisdiction of the district courts is filed in the Court of Claims, the Court of Claims shall, unless the parties consent to dismissal, transfer such case to any district court in which it could have been brought at the time such case was filed.